



POLICE DEPARTMENT

April 22, 2019

-----X

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2019-20343
Sergeant Stephanie McClinton-Young	:	
Tax Registry No. 924161	:	
25 Precinct	:	

-----X

At: Police Headquarters  
One Police Plaza  
New York, NY 10038

Before: Honorable Nancy R. Ryan  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Beth Douglas, Esq.  
Ayisha Amjad, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: Sergeant Stephanie McClinton-Young  
Respondent appeared *pro se*

To:

HONORABLE JAMES P. O'NEILL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

COURTESY • PROFESSIONALISM • RESPECT

Website: <http://nyc.gov/nypd>

## CHARGES AND SPECIFICATIONS

1. Said Sergeant Stephanie McClinton-Young, while assigned to the 25th Precinct, on or about March 28, 2019, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that, said Sergeant failed to comply with a lawful order to appear at an Official Department Interview being held pursuant to Patrol Guide Procedure 206-13.

P.G. 203-03 Page 1, Para 2

P.G. 203-10 Page 1, Para 5

COMPLIANCE WITH ORDERS

PUBLIC CONTACT-

PROHIBITED CONDUCT

2. Said Sergeant Stephanie McClinton-Young, while assigned to the 25th Precinct, on or about March 28, 2019, was scheduled to work a tour from 0655x1552 hours and thereafter was absent without leave for the entire tour, without just cause.

P.G. 203-05, Page 1, Paragraph 1

P.G. 205-18, Pages 1 &amp; 2

PERFORMANCE ON DUTY - GENERAL

ABSENT WITHOUT LEAVE

## REPORT AND RECOMMENDATION

Respondent initially appeared with her counsel, John Patten, Esq., who had been provided to her by her union, on April 9th and 15th. On that date, she and Patten both vehemently informed the court that they wanted to discontinue the attorney-client relationship. Because Respondent filed her retirement papers on March 27th, with a retirement date of April 25th, this trial and decision needed to be expedited. As a result, Respondent was given a hard deadline of April 17th to find a new attorney (or exercise her option to rescind her pending retirement application to allow for more time) but did not do so.

On April 17, 2019, Respondent appeared *pro se* and entered a plea of Not Guilty to the subject charges. The Department called Sergeants Antoine Ducret, Evan Galane and Nicholas Graziano, Lieutenant Terence McDowell, Captain Leedroige Manuel, Deputy Inspector Theodore Federoff and Respondent. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. I find Respondent Guilty of

both Specifications and recommend a penalty of the forfeiture of 20 days currently being served on suspension.

## ANALYSIS

It is undisputed that on March 25, 2019, Respondent, who had been on sick leave, returned to her assignment at the 25 Precinct, where she was placed on restricted duty. On that date, she told Sergeant Galane that she was going to retire and she filled out a discontinuance of service form. (Dep't Ex. 2) She also filled out leave of absence forms. Inspector Federoff initially approved the leave requests, which he testified were for the period to "run her retirement," and included the dates of March 26th, 27th and 28th. Respondent, however, did not go to the pension bureau on March 25th to file her papers.

Respondent acknowledges that on March 26, 2019, Sergeant Galane told her that the leave of absence requests she had filled out were now being denied. She further acknowledges that on that same date, she received from Sergeant Galane a notice to appear for an official Department Interview at Personnel Bureau Investigations on March 28, 2019.

Respondent filed her retirement papers on March 27, 2019. Although she had already been informed that her leave requests were denied, Respondent did not appear for work on March 28, 2019, nor did she appear for the official Department Interview scheduled for that date. On March 28<sup>th</sup>, numerous attempts were made by her command to communicate with Respondent about her absence. She was contacted via text messages, visits to her home and outreach to her emergency contact. There was no indication that any such attempts were made to locate Respondent when she was absent the 27<sup>th</sup>. Respondent acknowledged that she was at home on the 28th and was aware the police were knocking, but didn't answer her door. On both

April 3rd and 4th, 2019, Respondent did appear for two separate official Department Interviews and answered the investigator's questions.

The Department called witnesses who presented testimony that Respondent was initially granted the leave because they thought she was retiring and were not aware that there were any ongoing investigations. Once they learned of the open investigation they revoked the leave and notified Respondent of the Department Interview set for March 28th. Inspector Federoff testified that because Respondent was not using her annual leave or "running her time" before retirement, his command had authority to cancel Respondent's leave request. (Tr. 38-39) Sergeant Galane testified that he is the one who notified Respondent regarding these two items. He testified that he was told by Inspector Federoff on March 26, 2019 to attempt to notify Respondent that she was scheduled for an official Department Interview on March 28th. (Tr. 52-53) He was able to speak to her in person at about 2100 hours the night of March 26th. During the in-person conversation, he informed Respondent that she had to go to the official Department Interview on the 28th to which she responded, "okay." (Tr. 53) He testified that he told her to start her tour at 0655 hours on the 28<sup>th</sup>, and to go to the interview at 1130 hours. He also explained to her that the leave requests she had filed were now denied by the CO because she hadn't gone downtown to retire as she indicated she would. (Tr. 53-54) Sergeant Galane texted Respondent a photograph of the notice to appear for the official Department Interview. Also included in the chain of texts from Sergeant Galane was language that Investigations was ordering Respondent to go to a GO15 on March 28 at 1130 hours. (Dep't. Ex. 3)

Sergeant Galane also testified about the efforts he made on the 28th to reach Respondent after she had failed to report to work. He made phone calls and also texted her. He indicated that Respondent responded to him by text, but he did not share them with the court indicating he was advised by an SBA attorney not to do so since he was a delegate. He testified that he did not

at any time between March 25th and 28th tell Respondent she did not have to appear for the official Department Interview on the 28th, but he acknowledged that he did tell her on March 25th that he would find out if she had to go to the interview. (Tr. 60-63)

The Department also presented witnesses, in addition to Galane, who testified about the efforts they made to contact Respondent on March 28th. Inspector Federoff left a voicemail message for Respondent. Beginning at 0900 hours, Lieutenant McDowell and Captain Manuel checked with the sick desk and court section and also left voicemail messages for Respondent. Respondent did not answer the door when McDowell went to her home at 1006 hours or when he returned with Captain Manuel at 1100 hours. During both visits, McDowell walked around the house, knocked on the front and side door and saw that the blinds were drawn. Respondent's personal vehicle, a white Infiniti, was present at the home on both occasions. [REDACTED] also visited her home and received no response. (Tr. 41-44, 69-75, 80-81) Additionally, Manuel called Respondent's emergency contact, [REDACTED]. He briefly spoke with her but never received a call back so he visited her home, to no avail. (Tr. 81-84).

At approximately 1630 hours, Manuel told Respondent that it was his understanding that her days off had been cancelled. Respondent did not reply for the rest of the day. (Tr. 84-86) McDowell delivered a Letter of Suspension in a Department envelope to Respondent's home at approximately 2115 hours; it did not appear that anyone was home at the time. (Tr. 76)

Respondent was called by the Department to testify at trial and she did so without being ordered to do so. She testified that on the 25<sup>th</sup>, she told Sergeant Galane that she was going to retire and had called the pension section to find out what the procedure was. (Tr. 101) She further testified that Sergeant Galane called her the evening of the 25th to tell her that Personnel Bureau Investigations had inaccurately represented to the command that Respondent had failed to report to the Medical Division or to 1 Police Plaza on the 25th. She further stated that Sergeant

Galane told her they were trying to bring her in for an investigation but that it was too late. (Tr. 102)

With regard to the 26th, Respondent testified that on that day, Sergeant Galane did advise her that her vacation requests had been rescinded and that she was notified to appear for the official Department Interview on the 28th at 1130 hours. She asked him how things changed from a day ago. (Tr. 101-103) Respondent testified that during this March 26th conversation, Sergeant Galane told her that the Personnel Bureau threatened that if she went to the pension section to retire they would red flag her and would pull her paperwork so that she couldn't retire. (Tr. 104) Respondent, while stating that a text is not an official notification, did acknowledge receipt of Sergeant Galane's text forwarding a photograph of the notification to appear on March 28<sup>th</sup>. (Tr. 103-104)

Respondent did go to the pension section on March 27th and filed for a vested interest retirement. (Tr. 104)

Regarding March 28, 2019, Respondent testified that she was on vacation and did not work the second platoon. She received many phone calls and messages but didn't listen to them. (Tr. 105) She did speak to the Captain and texted him and Sergeant Galane. She also texted Captain Manuel and told him she was okay and she was on vacation. Captain Manuel responded to her at 1636 hours that he had been advised she was not on vacation and that she had been ordered to come into work. She texted him back the next day that she had returned her ID card to the [REDACTED]. (Tr. 113-114)

Respondent testified she did not appear for the Department Interview because she was on vacation and, "a person can't be notified if they're on vacation that's attached to terminal leave." (Tr. 106) She was at her residence that day when members of the service arrived. She claims that they blocked her driveway, looked in her garbage cans and mailbox and were, "all over" her

property. She testified that she does not have to answer her doorbell when she is on vacation. (Tr. 107) She was notified she was suspended from duty on the 28th. (Tr. 109) On April 3rd and 4<sup>th</sup>, while Respondent believed she was still on vacation, she did appear for official Department Interviews so she would no longer be harassed by the Police Department coming to her home. (Tr. 120)

Respondent is charged with failing to comply with a lawful order to appear at an official Department Interview on March 28, 2019 and for being absent without leave for her entire tour on that same date. Respondent conceded that, she was told by Sergeant Galane on the evening of March 26th that her vacation had been rescinded and she was to appear for an official Department Interview on March 28th. At trial, she also acknowledged receipt of a copy of the notice to appear on that same evening. It is uncontested, that despite these notifications, Respondent did not show up for the Department Interview on the designated date and failed to appear at all for work that day. Accordingly, the record has established by a preponderance of the credible evidence that: an order was communicated to Respondent which she heard; the content of the order was clear and unambiguous; and, Respondent willfully refused to obey that order.

This tribunal also finds that Respondent's rationale for disobeying the order has no merit. Under the "obey now, grieve later" principle, a public employee's obligation is to obey the lawful order of a supervisor and, if he or she disagrees, to grieve the order at a later time through proper channels and procedures. As noted above, Inspector Federoff testified that because Respondent was not using her annual leave or "running her time" before retirement, his command had authority to cancel Respondent's leave request. (Tr. 38-39)

Based on the record in its entirety, including her own admissions, Respondent is guilty of both specifications.

## PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 7, 1999. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has asked that Respondent's employment with the Department be terminated. It is noteworthy that they did not cite any precedent when recommending this penalty. While penalties of termination have been imposed in cases where there has been an outright and continued refusal to appear for official Department Interviews or to answer questions in official Department Interviews, this case differs in significant ways from those cases. There are also mitigating factors in this case which must be considered when determining an appropriate penalty. The most compelling factor in mitigation of the penalty is the uncontested fact that Respondent obeyed subsequent orders by appearing for two subsequent Department Interviews and answering the questions posed during those interviews. Respondent can be seen to have, to some degree, remediated her initial failure to go to work and the interview.

Secondly, while Respondent did acknowledge that on the 26<sup>th</sup>, she was told of the revocation of her vacation and received the information regarding the interview and therefore was clearly aware of those obligations, there were factors which may have led to some confusion regarding her status prior to that. Although Respondent's obligation was to obey the order clearly communicated to her, I found Respondent to be a credible witness on this point. While she was somewhat agitated and emotional at times during the trial, she was able to recall dates and conversations quite clearly and her testimony was also largely consistent with the testimony she gave at her official Department Interviews conducted in early April. I credit her testimony



that Sergeant Galane initially told her on the 25th that she did not have to appear for the March 28th interview because they didn't notify her in time. I also credit her testimony that Sergeant Galane only told her that she needed to go to the interview after her vacation had, in her mind, begun, and that this gave her the impression that she did not need to participate in the interview regardless of what she heard subsequently. I was troubled by the fact that Sergeant Galane, while denying this is exactly what he said, also did not provide a complete copy of his text exchanges with the Respondent. Another factor which may have led Respondent to be confused as to her status is that on the 27th, there apparently were no AWOL procedures activated by the 25 Precinct when Respondent did not appear at work that day.

Ultimately, however, as a Sergeant with over 19 years of service with the NYPD, Respondent was not entitled to ignore the notice to appear and to sit inside her home knowing that numerous efforts were being made to contact her on the 28<sup>th</sup>. She was also not entitled to insist on her own interpretation of her vacation entitlements and rules and fail to go through proper channels. She could have easily spoken to any of the supervisors who were trying to reach her to clarify any questions she had. Failure to do so prejudiced the good order and discipline of the Department.

Based on the above analysis, the facts in this case are comparable to situations where a member of service fails to appear for duty. In those cases, the range of penalties is from 10 to 25 vacation days. The cases on the lower end consist of negotiations where a respondent was off post for a few hours. (*See, e.g., Disciplinary Case No. 8203/12* [April 29, 2013][Ten-year detective with no prior disciplinary history negotiated a penalty of 10 vacation days for being absent from an assigned post without leave for approximately four hours and seven minutes, and for being absent from residence while on sick report without the permission of the Health Services Division Sick Desk Supervisor]; *Disciplinary Case No. 2014-12109* [May 1, 2015]

[Twenty-two year detective, with no prior disciplinary history, negotiated a penalty of 10 vacation days for improperly transporting his ten year-old son in a Department vehicle to and from a Boy Scouts meeting, while on duty. Respondent also made inaccurate entries in Department records indicating that he was conducting case-related surveillance at the time he was transporting his son]; *Disciplinary Case No. 2015-13391* [September 1, 2015][Three-year police officer, with no prior disciplinary record, negotiated a penalty of 10 vacation days for leaving the confines of his assigned Command in Brooklyn and driving a Department vehicle to Queens without requesting permission or authorization from a supervisor. Respondent admitted to doing so and explained that he did this to check the oil meter at his parents' home to ensure their heat was working. Respondent also failed to make required entries in his Activity Log about his Radio Motor Patrol (RMP) vehicle for this date, his driving to the Queens residence owned by his parents, and his activities for the last three (3) hours of his tour]; *see also, Disciplinary Case No. 2017-16868* [December 7, 2017][Eleven-year police officer with one prior adjudication negotiated a penalty of 25 vacation days and the forfeiture of time/leave balances totaling 48 hours and 47 minutes for (i) being absent for his assignment without permission or police necessity on approximately 8 occasions for an approximate total of 48 hours and 47 minutes, (ii) improperly beginning his tour at court, instead of being present at his command for roll call, (iii) failing to maintain his Activity Log, and (iv) failing to call the desk officer of his command at the end of his tour to have his EOT memorialized in the command log]).

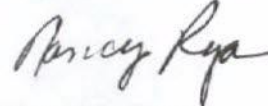
A respondent in an analogous trial forfeited 25 vacation days. (*Disciplinary Case No. 2010-2042* [February 12, 2013][Twenty-year police officer with no prior disciplinary record forfeits 25 vacation days after a mitigation hearing for being absent without leave on three occasions. On two of the occasions, Respondent mistakenly believed that he was on sick leave.

On the third occasion, he was away from his assignment for a period of 40 minutes while he was searching for his misplaced Activity Log]).

In this case, as a sergeant, Respondent should have complied with the notice to appear for the hearing, which she acknowledged receiving. Given that she appeared and cooperated during two subsequent Department Interviews, however, I find that termination is not warranted.

Taking into account that Respondent was suspended from duty on March 28, 2019, I recommend a penalty of the forfeiture of 20 suspension days that she is currently serving.

Respectfully submitted,

Handwritten signature of Nancy R. Ryan in black ink.Handwritten initials 'KM' in black ink.

Nancy R. Ryan  
Assistant Deputy Commissioner Trials

**APPROVED**

APR 26 2019

Handwritten signature of James P. O'Neill in blue ink, written over the 'APPROVED' stamp.

JAMES P. O'NEILL  
POLICE COMMISSIONER

1000



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
SERGEANT STEPHANIE MCCLINTON-YOUNG  
TAX REGISTRY NO. 924161  
DISCIPLINARY CASE NO. 2019-20343

Respondent was appointed to the Department on July 7, 1999. On her last three performance evaluations, she received a 3.0 overall rating of "Competent" for 2018, and 4.0 overall ratings of "Highly Competent" for 2016 and 2017. She has received three medals for Excellent Police Duty. [REDACTED]

Respondent has no disciplinary record.

For your consideration.

 <sup>RM</sup>  
Nancy R. Ryan  
Assistant Deputy Commissioner Trials